



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AD00

Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The USDA Forest Service is implementing regulations under the Food, Conservation, and Energy Act of 2008 (hereinafter the “2008 Farm Bill”). This rule provides for the provision of trees, portions of trees, or forest products from National Forest System lands, free of charge, to federally recognized Indian tribes (Indian tribes) for traditional and cultural purposes. This rule implements section 8105 of the 2008 Farm Bill.

DATES: This rule is effective [INSERT DATE 30 days from date of publication in the FEDERAL REGISTER.]

ADDRESSES: Information on this final rule may be obtained via written request addressed to Director, Forest Management Staff, USDA Forest Service, Mail Stop 1103, 1400 Independence Avenue, SW., Washington, D.C. 20250 or by email to *FarmBillForestProductsRule@fs.fed.us*.

The public may inspect comments previously received at the Office of the Director, Forest Management Staff, Sidney Yates Building, Third Floor SW Wing, 201 14th Street SW,

Washington, D.C. or via the world wide web/Internet at

http://www.fs.fed.us/forestmanagement/traditional_cultural/index.shtml. Visitors are encouraged to call ahead to 202-205-1766 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Joe Reddan, Assistant Director, Forest Products, 202-557-6591 or Sharon Nygaard-Scott, Forest Service, Forest Management Staff, 202-205-1766, during normal business hours. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Forest Service is issuing this final rule to implement section 8105 of the 2008 Farm Bill (section 8105). Section 8105 has also been codified in Title 25 of the U.S. Code, chapter 32A - Cultural and Heritage Cooperation Authority (25 U.S.C. 3055 - Forest Products for Traditional and Cultural Purposes). Subject to certain statutory limitations, section 8105 allows the Secretary of Agriculture to provide Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. In this preamble to the final rule, the term “forest products” is used as a shorthand for “trees, portions of trees, or forest products”. Specifically, section 8105(a) provides that the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.

However, pursuant to section 8105(b), Indian tribes are prohibited from using any trees, portions of trees, or forest products provided under section 8105(a) for commercial purposes. While the 2008 Farm Bill does not define commercial purposes, it does define

Indian tribe and traditional and cultural purpose. Section 8102(5) defines Indian tribe as any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1). In addition, per section 8102(9), traditional and cultural purpose, with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe.

On December 2, 2009, the Forest Service published an Interim Directive (ID) to the Forest Service Handbook (FSH) 2409.18 to implement section 8105 of the 2008 Farm Bill. The ID was reissued, without change, four times (effective March 8, 2011 (ID 2409.18-2011-1), June 7, 2012 (ID 2409.18-2012-2), December 6, 2013 (ID 2409.18-2013-3), and May 14, 2015 (ID 2409.18-2015-1), and remains in effect until November 14, 2016. This final rule will replace the Interim Directive, which will be entered in FSH 2409.18, chapter 80, section 82.5.

The proposed rule was published in the Federal Register on July 31, 2014 (79 FR 44327), and a comment period ensued over a period of 60 days. The Forest Service received 12 written comments through 10 letters, and all were considered in the development of this final rule.

This rule establishes Forest Service policy for providing Indian tribes with trees, portions of trees, or forest products for traditional and cultural purposes. Based on the comments received on the ID during formal government-to-government consultation, and those received during the proposed rulemaking, as well as the Agency’s experience using the ID to implement section 8105 over the last 7 years, the Agency is now publishing this final rule.

This final rule adds § 223.15 to 36 CFR Part 223, Subpart A. Section 223.15(a) authorizes Regional Foresters or designated Forest Officers to provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes. Section 223.15(b) restates the 2008 Farm Bill’s statutory definitions of “Indian tribe” and “traditional and cultural purpose,” and includes the Forest Services’ regulatory definition of “tribal officials.”

Sections 223.15(c) and (d) describe who can request trees, portions of trees, or forest products for traditional and cultural purposes, and where those requests should be directed. Tribal officials should submit requests for trees, portions of trees, or forest products to their local Forest Service District Ranger’s office for routing to the appropriate designated authority. In addition, tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer, and if necessary, how the request fits a traditional and cultural purpose.

A designated Forest Officer is an individual whom the Regional Forester has granted written authority to provide products under § 223.15. Currently, there is no limitation on the number of requests or authorizations per unit of a forest product or the number of requests or authorizations per Indian tribe. There is currently no limitation on the amount of trees, portions of trees, or forest products that can be requested at any one time. However, Forest Officers cannot grant materials in excess of the value limitations at § 223.15(e) in any given fiscal year.

Section 223.15(f) explains that the Forest Service may condition or deny requests for trees, portions of trees, or forest products under § 223.15. Finally, § 223.15(g) provides that all decisions made under § 223.15 must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, and all other applicable laws and regulations, and are subject to tribal treaty and other reserved

rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 8107(b)). The Forest Service will do its best to process requests received in a reasonable period of time, in light of these statutory and regulatory requirements.

II. Formal Government-to-Government Consultation

After issuance of the December 2, 2009, Interim Directive (ID 2409.18-2009-2), the Forest Service formally entered into consultation with Indian tribes, with the Regional Foresters extending invitations to Indian tribes by May 1, 2010. This consultation was conducted under Executive Order (EO) 13175, *Consultation and Coordination with Indian Tribal Governments*. Indian tribes were provided the ID to FSH 2409.18, and were invited to consult on proposed changes to 36 CFR part 223. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010.

Regional Foresters were directed to invite all federally recognized Indian tribes in their Region to consult. In addition, they were directed to invite any federally recognized Indian tribes who have expressed a historical connection to National Forest System lands in their Region, even if they no longer reside there. To make the consultation more effective, the Forest Service provided Indian tribes with a question and answer document describing the Interim Directive and Forest Services' intent to implement section 8105 of the 2008 Farm Bill through proposed changes to 36 CFR part 223. Recommendations from the Indian tribes have been incorporated, as appropriate, into this final rule.

III. Summary of Comments and Responses

The Forest Service received 12 comments in response to the proposed rule, several of which were similar in scope and nature. A summary of the comments and the Agency's responses and actions taken to the comments follow.

Savings Provisions comment: Three commenters expressed concern that the proposed rule did not incorporate the savings provisions at 25 U.S.C. 3057(b), which protect existing tribal treaty and other reserved rights, as well as agreements between the Forest Service and an Indian tribe. Section 8105 has been codified in 25 U.S.C. 3055 - Forest Products for Traditional and Cultural Purposes. The savings provisions at 25 U.S.C. 3057(b) apply to forest products for traditional and cultural purposes. These savings provisions state that:

Nothing in the chapter –

- (1) diminishes or expands the trust responsibility of the United States to Indian tribes, or any legal obligation or remedy resulting from that responsibility;
- (2) alters, abridges, repeals, or affects any valid agreement between the Forest Service and an Indian tribe;
- (3) alters, abridges, diminishes, repeals, or affects any reserved or other right of an Indian tribe; or
- (4) alters, abridges, diminishes, repeals, or affects any other valid existing right relating to National Forest System land or other public land.

Savings Provisions response: The Forest Service has revised §223.15(g) of the final rule to incorporate the savings provisions codified at 25 U.S.C. 3057(b). The revised §223.15(g) states: All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 3057(b)).

Additionally, the authority citation under Part 223 now includes references to both 25 U.S.C.

3055 and 3057.

Prioritized Use and Access comment: One commenter proposed that the collection of forest products for traditional and cultural purposes be prioritized over other uses and that traditional gathering areas be closed to other uses. The commenter indicated that frequently the collection of forest materials occurs immediately preceding a traditional or religious ceremony and requested assurance that access to the traditional resources be prioritized and allowed, regardless of the situation or season.

Prioritized Use and Access response: Authorized timeframes for gathering, prioritization over other uses and needs, and access to specific gathering areas may vary by request. The Forest Service is responsible for balancing requests made under section 8105 of the 2008 Farm Bill with other planned, possible, and mandated uses in accordance with its mandate to manage the national forests for multiple uses (16 U.S.C. 528-531). This rule provides one path for collection of forest products, but prioritization of the various uses and purposes of forest products and access to National Forest System lands are outside the scope of this rule. Instead, the Forest Service determines how to balance competing demands for forest products and land use when revising or amending land management plans using the National Forest System Land Management Planning process (36 CFR part 219). The planning process requires responsible officials to actively engage stakeholders, the public, and federally recognized Indian tribes using collaborative processes where feasible and appropriate (36 CFR 219.4). Proposed individual actions and projects subject to the NEPA requirements also require opportunities for public participation and comment (36 CFR 220.4).

Indian tribes are encouraged to participate in these processes and to work with and regularly communicate to local Forest Service Officials the location of forest products used for traditional and cultural purposes. Local Forest Service Officers will then be aware of potential gathering areas and times when planning projects to mitigate potential conflicting activities and requests. Information regarding the locations of resources shared with Forest Service officials are protected from sharing by the Prohibition on Disclosure (25 U.S.C. 3056). Assessment and determination for priority of use and access to areas will be made at the Regional, National Forest, or local Ranger District levels as appropriate based on local considerations, land management plans, needs, and consultation with local Indian tribes.

This rule does not designate gathering areas. Section 223.15(f) of the rule authorizes, however, denials of or the placing of conditions on requests for access to gather. The reasons for the denials or conditions include, but are not limited to:

- (1) Protecting public health and safety;
- (2) Preventing interference with Forest Service and/or commercial operations;
- (3) Complying with Federal and State laws and regulations;
- (4) Ensuring sustainability; or
- (5) Otherwise protecting National Forest System land and resources.

Adoption of Region 5 Policy as the National Rule comment: One commenter represents an Indian Tribe within the State of California that has been using the existing Region 5 Traditional Gathering Policy. The Indian tribe is satisfied with the policy and has recommended that this policy be used as a model and applied nationwide. The policy referenced by the commenter exists as a Regional Supplement to the Forest Service Manual (FS Region 5, FSM 1500, ch. 1560, Amendment No: 1500-2007-1) which sets out direction on traditional gathering policy

within the Region to promote consistency between Forest Service and Bureau of Land Management in collaboration with local tribal communities.

Adoption of Region 5 Policy as the National Rule response: Regional Forest Service and tribal interests, needs, and agreements may vary by location, tradition, culture, and practice. Forest Service Regions have the opportunity to supplement this rule, consistent with the policy established herein, for best use in their area of administration. The Region 5 policy was developed through collaboration and interests specific to parties in the Region 5 area. Forest Service Region 9 also has a document for use that includes considerations and direction for application within FS Region 9 (*Tribal Relations Strategic Framework for the Eastern Region, Northeastern Area State & Private Forestry, and Northern Research Station – 2015*). While the sharing of direction and guidance on this topic is appropriate between Regions, the Regions may implement this rule through supplements that are consistent with the rule and that meet the particular needs of a Region based on applicable laws, tribal treaty or other reserved rights, the parties involved, and other local needs. Any new supplements must be consistent with the rule. Any existing Regional supplements or policies should continue to be implemented in accordance with § 223.15(g). The Region 5 Traditional Gathering Policy will not be adopted as Agency-wide direction in this rule.

Requests by Individuals comment: One commenter sought clarification as to whether this rule allows individual tribal members to request trees, portions of trees, or forest products for traditional and cultural purposes, or whether such requests must be submitted by tribal officials. Section 8105 of the 2008 Farm Bill states, “the Secretary may provide free of charge to Indian tribes any trees, portions of trees, or forest products from National Forest System land for traditional and cultural purposes.” Section 8102 expressly defines the terms “Indian” and

“Indian Tribe” separately. The term “Indian” references an individual member of an Indian tribe. As defined in section 8102, the term “Indian Tribe” references a “tribe, band, nation, pueblo, village, or other community” which is included on the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

Requests by Individuals response: For purposes of this rule, authorization is limited to government (Forest Service)-to-government (Indian tribe), rather than government-to-individual, provision of trees, portions of trees, or forest products. Tribal officials should submit requests on behalf of the Indian tribe. Individual members of federally recognized Indian tribes should coordinate requests through their tribal officials. Individual members of federally recognized Indian tribes may also use existing provisions at 36 CFR Part 223, Subpart A, which authorize free-use of trees, portions of trees, or forest products to individuals, subject to limitations or circumstances as stated in the regulations.

Scale of detail for requested material comment: One commenter sought clarification as to whether requests are required to include details as to the type and quantity of material being requested. The 2008 Farm Bill does not specify a process for requesting materials authorized within section 8105.

Scale of detail for requested material response: It is important that the requests for trees, portions of trees, and forest products under this rule be complete, in order to prevent any misunderstandings, or delays in processing, and to provide for efficient field administration and gathering under authorized permits. The level of detail required for requests may vary by location and type of material due to the level of sensitivity and abundance of the item being requested, to insure that Forest Service Officers can maintain accountability and sustainable management of the forest products. Additionally, tribal officials are encouraged to explain their

requests to Regional Foresters or designated Forest Service Officers, and if necessary, how the request fits a traditional and cultural purpose. Requests which do not include sufficient information for a Forest Service Officer to make an assessment that the request fits a traditional and cultural purpose and does not conflict with existing plans, or maintain sustainable levels and management of the material(s) requested, may be delayed or denied.

Levels for Authorizing Requests comment: One commenter requested that the delegations of authority limitations within the proposed rule (36 CFR 223.15(e)) be removed.

Levels for Authorizing Requests response: The levels set in the proposed rule have not been removed or modified for the final rule. “Limitations” as specified in this final rule pertain to the level of delegation authorized for approving free use requests as specified in 36 CFR 223.8. The levels proposed in this rule (§ 223.15) are an increase from those which apply to other activities specified in § 223.8. There is no limitation on the number of requests that can be made or authorized per Indian tribe. These levels for delegating authority of approval for requests made under this rule are necessary to ensure consistency with the levels of accountability assigned to each Forest Service Officer for management of National Forest System lands and resources within their respective areas of responsibility.

The value limitations do not limit the amount of trees, portions of trees, or forest products that Indian tribes may request through this rule. If an Indian tribe makes a request that has a higher value than the maximum which can be authorized by a local official, then the request will be forwarded to a Forest Service Officer who has the authority to grant the request. Pursuant to this rule, if the value of the forest products requested is greater than the value that may be locally granted, the request will be forwarded as follows —District Ranger (value limitation \$25,000), Forest Supervisor, (value limitation \$50,000), and Regional Forester (value limitation \$100,000).

Requests that exceed \$100,000 in value will be reviewed and approved by the Chief of the Forest Service.

Definition of commercial comment: One commenter requested clarification as to the definition for the term “commercial purposes”. Although the term “commercial purposes” was used in the 2008 Farm Bill (section 8105), a definition of the term was not included in the definitions at section 8102.

Definition of commercial response: In consideration of this request for clarification of the definition of the term “commercial purposes”, the Agency reviewed a number of existing definitions, consulted existing Regional policy, and considered defining the term within the final regulatory text. The Agency has decided, however, not to define the term “commercial purposes” in this rule for the reasons discussed herin.

The term “commercial” is used in other subparts of 36 CFR part 223 without definition. The need to define this term, and a definition appropriate for application and administration, may vary by location and the accepted traditional and cultural practices of the Indian tribe(s) involved. In particular, Regional Forest Service representatives expressed concern that defining the term in the body of the rule could preclude varying levels of locally accepted traditional and cultural practices. Regional Representatives requested that we leave a definition of this term to Regional discretion in order to best suit the partnerships and agreements developed in consultation with Indian tribes and used within the regions. Regions implementing this rule under the existing interim directive and supplemental Regional guidance, specific for the region, have not experienced issues to this point regarding what is or is not deemed commercial for purposes of this rule.

Based on the lack of a definition for “commercial purposes” in the 2008 Farm Bill,

regular and undefined use of the term in other Forest Service documents, and Forest Service Regional Staff's request that the term be left undefined, this final rule does not include a definition within the regulatory text.

Traditional barter and trade comment: One commenter requested clarification of whether barter and trade is permitted for materials obtained through this rule. Specifically, whether an Indian tribe may barter or trade materials obtained pursuant to this rule as a means of recouping the costs an Indian tribe incurs for planning, gathering, and processing such materials.

Traditional barter and trade response: Barter and trade is not expressly addressed in the regulatory text for this rule.

This rule derives from the authority and prohibitions within section 8105 of the 2008 Farm Bill. The Forest Service is authorized to provide trees, portions of trees, or forest products free-of-charge from National Forest System land to Indian tribes for traditional and cultural purposes, except when those purposes involve commercial use. According to the definition in section 8102 of the 2008 Farm Bill, the term "traditional and cultural purpose," with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or ceremonial nature of the use, area, or practice to the Indian tribe. Barter and trade of materials obtained through requests made under this rule, which meet the definition for a traditional and cultural purpose and are not considered to be commercial, may be acceptable. Tribal officials are encouraged to explain their requests to Regional Foresters or designated Forest Service Officers and, if necessary, describe how the request fits a traditional and cultural purpose. Requests that do not include enough information for a Forest Service Officer to make a reasonable assessment that the request fits a traditional and cultural purpose and will not be used for commercial purposes may

be denied.

Similar to the term “commercial”, the need to address barter and trade may vary by location and the accepted traditional and cultural practices of the Indian tribe(s) involved. Regions implementing this rule under the existing interim directive and supplemental Regional guidance, specific for the region, have not experienced issues to this point regarding barter and trade for purposes of this rule. Authorization of barter and trade will be left to Regional discretion in order to best suit the partnerships and agreements developed in consultation with Indian tribes and used within the region. Any forms of barter and trade which are authorized in previous agreements, tribal treaty, or other reserved rights will not be affected by this rule.

General Comment (1): One commenter expressed direct support of the previously proposed rule.

General comment (1) response: This comment is acknowledged but deemed outside of the scope of this rule. The Agency is adopting this rule for the reasons stated within including the rule’s consistency with section 8105 and it meets the Agency’s needs.

General Comment (2): One commenter offered to share information regarding an organization that funds forest associations.

General Comment (2) response: The comment is is found to be outside the scope of this rule.

Summary of Additional Changes

Use of the term “noncommercial” – No comments were received in response to the proposed rule’s use of the term “noncommercial”. However, the term has been removed from both the title of section 223.15 as well as from section 223.15(d). Noncommercial was being used, in the proposed rule, as a reference to the Farm Bill’s prohibition on commercial purposes,

but, because it was not used in the Farm Bill, the term has been removed from this final rule, to avoid any confusion and for clarification purposes.

Section 223.15(d) – Although no comments were received, a minor change was made to the wording in the last sentence, in section 223.15(d), describing how notification should take place when two or more National Forests are involved in a single request. This was done to ensure clarity regarding the notification requirement.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under U. S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review as amended by 13422. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This final rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding consideration of small entities and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number

of small entities as defined by the Executive Order. The final rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

Environmental Impact

This final rule has no direct or indirect effect on the environment. The rules at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions that do not significantly affect the quality of the human environment. The Department's assessment is that this final rule falls within this category of actions, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism, and concluded that this action will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Consultation with Tribal Governments

Pursuant to Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, the Forest Service entered into consultation with Indian tribes regarding this proposed rule. Beginning on or before May 1, 2010, Indian tribes were provided with the Forest Service's Interim Directive on section 8105 of the 2008 Farm Bill, and were invited to consult on changes to 36 CFR part 223. In addition, the Forest Service provided a question and answer

document related to the Interim Directive and regulatory actions the Agency was considering to implement section 8105. Government-to-government consultation occurred over a period of at least 120 days, through September 1, 2010. The Forest Service received 88 comments as a result of consultation, including some received after September 1; all were considered in the development of the proposed rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that this action will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

With this submission, and upon OMB approval, the addition of the collection requirements of Rule Identification Number 0596-AD00, OMB no. 0596-0233 for federally recognized Indian tribes wishing to request free use under the authority of section 8105 of the 2008 Farm Bill are being added to OMB control number 0596-0085 *Forest Products Removal Permits and Contracts*.

Title: Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes

OMB Control Number: 0596-0233

Abstract: The information collection associated with the proposed rule *Sale and Disposal of National Forest System Timber; Forest Products for Traditional and Cultural Purposes* was published in the Federal Register on July 31, 2014 (79 FR 44327) as OMB control number 0596-0085 *Forest Products Removal Permits and Contracts*, Regulatory Identification Number 0596-AD00. The information collection included updates made to charge permits and contracts as

well as revisions made to accommodate requests from Indian tribes for free use under section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651) [hereinafter the “2008 Farm Bill”], per the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and implementing regulations at 5 CFR part 1320. No comments were received regarding the information collection during the proposed rule’s 60-day notice and comment period.

However, OMB has requested the information collection requirements specific to the 2008 Farm Bill, be disclosed separately as OMB 0596-0233. Upon review and approval from OMB, the two information collections (OMB 0596-0223 and OMB 0596-0085) will be merged. Therefore, through this Federal Register notice, the Agency is providing an opportunity to comment on the information collection associated with the final rule during the 30-day period between the publication date and the effective date of the final rule.

As stated earlier in this final rule, section 8105 of the 2008 Farm Bill provides the Secretary of Agriculture with discretionary authority to provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that the trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and the trees, portions of trees, or forest products will not be used for commercial purposes.

Indian tribes seeking products under the 2008 Farm Bill authority must make a request for free use. “Requests...must be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made: (1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or (2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.” Additionally, “[t]ribal officials are encouraged to explain their requests to the Regional Forester

or designated Forest Officer and, if necessary, describe how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should notify each of the affected Forest Service District Ranger's Offices of the requests made on other forests.” Under section 8105 of the 2008 Farm Bill, there is no stated maximum free use limitation for products requested by Indian tribes. Additionally, there is no limitation to the number of requests that each federally recognized Indian tribe may make under this final rule.

Should Indian tribes wish to obtain proof of possession, as may be required in some States, they could be issued a FS-2400-8 free use permit by the Forest Service. The FS-2400-8 form allows use of timber or forest products at no charge (36 CFR 223.5-223.13). No changes are being made to the free-use form as a result of the 2008 Farm Bill provision. Upon receiving the permit, the permittee must comply with its terms (36 CFR 261.6), which designate forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material. Only the minimum information necessary to comply with Federal laws and regulations is collected. Agency personnel enter the information provided by Indian tribes into a computerized database to use for any subsequent requests made by the Indian tribe. The information is printed on paper, which the applicant signs and dates. Agency personnel discuss the terms and conditions of the permit or contract with the applicant. The data gathered is not available from other sources. The collected information will help the Forest Service oversee the approval and use of forest products under section 8105 of the 2008 Farm Bill. For example, the collected information will be used to ensure applicants meet the criteria for free use of timber or forest products authorized under section 8105 and to identify permittees in the field by Forest Service personnel.

The following summarizes the information collection associated with the final directive:

Estimate of burden: Reporting burden for the collection of information is estimated to average 5 minutes per response.

Respondents: Federally recognized Indian tribes under section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651).

Estimated Number of Respondents: 1,132

Estimated Number of Annual Responses per Respondent: 1.5

Estimated Total Annual Responses: 2,123

Estimated Total Annual Burden Hours: 241

Comment is invited on (1) whether this information collection is necessary for the stated purposes and proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of burden associated with the information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. The comments will be summarized and included in the request to OMB for approval.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, and it has been determined that it has no effect on the supply, distribution, or use of energy. This rule

is administrative in nature and, therefore, the preparation of a statement of energy effects is not required.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. When the final rule is adopted: (1) all State and local laws and regulations that conflict with the final rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect will be given to the final rule; and (3), the Department will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This action will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National Forests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Forest Service, U.S. Department of Agriculture, amends 36 CFR part 223 as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

1. The authority citation for part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, 25 U.S.C. 3055 and 3057, 113 Stat. 1501a, 16 U.S.C. 528 note; unless otherwise noted.

2. Add § 223.15 to subpart A to read as follows:

§ 223.15 Provision of trees, portions of trees, or forest products to Indian tribes for traditional and cultural purposes.

(a) Pursuant to section 8105 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246, 122 Stat. 1651) [hereinafter the “2008 Farm Bill”], Regional Foresters or designated Forest Officers may, at their discretion, provide trees, portions of trees, or forest products to Indian tribes free of charge for traditional and cultural purposes provided that:

- (1) The trees, portions of trees, or forest products are provided to tribal officials on behalf of an Indian tribe for traditional and cultural purposes; and
- (2) The trees, portions of trees, or forest products will not be used for commercial purposes.

(b) The following definitions apply to this section:

Indian tribe. The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

Traditional and cultural purpose. The term “traditional and cultural purpose,” with respect to a definable use, area, or practice, means that the use, area, or practice is identified by an Indian tribe as traditional or cultural because of the long-established significance or

ceremonial nature of the use, area, or practice to the Indian tribe.

Tribal officials: The term “tribal officials” means elected or duly appointed officials of Indian tribal governments.

(c) Requests for trees, portions of trees, or forest products made under this section must be submitted to the local Forest Service District Ranger’s Office(s) in writing. Requests may be made:

- (1) Directly by a tribal official(s) who has been authorized by the Indian tribe to make such requests; or
- (2) By providing a copy of a formal resolution approved by the tribal council or other governing body of the Indian tribe.

(d) Requests for trees, portions of trees, and forest products made under this section must be directed to the appropriate Forest Service District Ranger(s)’ Office from which the items are being requested. Tribal officials are encouraged to explain their requests to the Regional Forester or designated Forest Officer and, if necessary, describe how the request fits a traditional and cultural purpose. When an Indian tribe requests forest products located on two or more National Forests, authorized tribal officials should notify each of the affected Forest Service District Ranger’s Offices of the requests made on other forests.

(e) Agency Line Officers and managers (who have been authorized by name through official Forest Service correspondence) are authorized to provide trees, portions of trees, and forest products under this section subject to the following limitations:

- (1) District Rangers and Forest Officers may provide material not exceeding \$25,000 in value in any one fiscal year to an Indian tribe;
- (2) Forest Supervisors may provide material not exceeding \$50,000 in value in any

one fiscal year to an Indian tribe;

(3) Regional Foresters may provide material not exceeding \$100,000 in value in any one fiscal year to an Indian tribe; and

(4) The Chief of the Forest Service may provide material exceeding \$100,000 in value to an Indian tribe.

(f) A request for trees, portions of trees, or forest products under this section may be conditioned or denied for reasons including, but not limited to the following:

(1) Protecting public health and safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Complying with Federal and State laws and regulations;

(4) Ensuring sustainability; or

(5) Otherwise protecting National Forest System land and resources.

(g) All decisions made under this section must comply with the National Forest Management Act, relevant land management plans, the National Environmental Policy Act, the Endangered Species Act, all other applicable laws and regulations, and are subject to tribal treaty and other reserved rights and the savings provisions of the Cultural and Heritage Cooperation Authority (25 U.S.C. 3057(b)).

July 29, 2016

(date)

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Chief, Forest Service

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